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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PATRICK RADDEN KEEFE,	:	Case No. 21 Civ. 5450 (JGK)
	:	
Plaintiff,	:	
	:	
-against-	:	ANSWER
	:	
FEDERAL BUREAU OF INVESTIGATION,	:	
	:	
Defendant.	:	
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Defendant Federal Bureau of Investigation (“FBI”), by and through its attorney, Audrey Strauss, United States Attorney for the Southern District of New York, answers the correspondingly numbered paragraphs of Plaintiff Patrick Radden Keefe’s Complaint upon information and belief as follows:

1. Paragraph 1 contains Plaintiff’s characterization of this action and legal argument, to which no response is required. To the extent a response is required, the FBI denies the allegations, except admits that Plaintiff purports to bring this action under the Freedom of Information Act, 5 U.S.C. § 552, *et seq.*

PARTIES

2. The allegations contained in Paragraph 2 do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent a response

is required, the FBI denies the allegations, except admits that it is an agency of the United States government.

3. The FBI lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3.

JURISDICTION AND VENUE

4. Paragraph 4 consists of legal conclusions and purports to construe the contents of two statutes. The FBI respectfully refers the Court to those statutes—28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B)—for a true and accurate statement of their contents.

5. Paragraph 5 consists of legal conclusions and purports to construe the contents of a statute. The FBI respectfully refers the Court to that statute for a true and accurate statement of its contents. The FBI lacks knowledge or information sufficient to form a belief as to Plaintiff's residence and principal place of business.

FACTS

Background of FOIA Requests

6. Based on a reasonable review of relevant materials collected to date, the FBI lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6.

7. Based on a reasonable review of relevant materials collected to date, the FBI lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7.

8. Based on a reasonable review of relevant materials collected to date, the FBI lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 8.

9. Based on a reasonable review of relevant materials collected to date, the FBI lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9.

10. The FBI lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10.

FOIA Requests and Constructive Denial

11. The FBI admits that, on December 3, 2015, it received a FOIA request from Plaintiff requesting records relating to Edwin P. Wilson.

12. The FBI admits that, on June 21, 2016, it received a FOIA request from Plaintiff requesting records relating to Frank Terpil.

13. The FBI admits the allegations in Paragraph 13.

14. The FBI denies the allegations in the first sentence of Paragraph 14. As to the second sentence, the FBI denies the allegations with respect to Mr. Wilson and avers that it produced 504 pages of responsive records concerning Mr. Wilson to Plaintiff on August 5, 2021. The FBI admits that Plaintiff's request relating to Mr. Terpil remains pending.

CAUSE OF ACTION

Violation of the Freedom of Information Act for Wrongful Withholding of Agency Records

15. The FBI incorporates its responses to the preceding paragraphs as if fully set forth herein.

16. To the extent Paragraph 16 purports to construe the terms of the statute, the FBI respectfully refers the Court to that statute for a true and accurate statement of its contents. The FBI otherwise denies the allegations in Paragraph 15. The FBI responded to

Plaintiff's request regarding Mr. Wilson by letter dated August 5, 2021, and produced to Plaintiff 504 pages of responsive records on that date.

17. The FBI admits the allegations in Paragraph 17.

REQUESTED RELIEF

18. The paragraphs following the "Wherefore" clause constitute a prayer for relief, to which no response is required. To the extent that a response is required, the FBI denies that Plaintiff is entitled to the requested relief or any relief.

AFFIRMATIVE AND OTHER DEFENSES

For its affirmative and other defenses, the FBI alleges as follows:

First Defense

The Complaint fails to state a claim upon which relief can be granted.

Second Defense

Some or all of the requested records are records protected from disclosure by applicable FOIA exemptions or exclusions, 5 U.S.C. § 552(b).

Third Defense

At all times alleged in the Complaint, the FBI acted in good faith, with justification, and pursuant to authority.

Fourth Defense

The Court lacks subject matter jurisdiction to the extent Plaintiff's request for relief exceeds the relief authorized under the Freedom of Information Act.

Fifth Defense

The Freedom of Information Act does not require the FBI to create new records, provide reasons for its actions, or explain the conduct of the agency.

The FBI may have additional defenses that are not known to it at this time, but that may be ascertained during litigation. The FBI reserves the right to assert each and every affirmative or other defense that may be available, including any defenses available pursuant to Rules 8 and 12 of the Federal Rules of Civil Procedure.

WHEREFORE, the FBI, having fully answered the allegations in the Complaint and stated its defenses, respectfully requests that this Court dismiss the Complaint with prejudice, enter judgment in favor of the FBI, award costs for defense of this action, and grant such other relief as may be just and equitable.

Dated: August 6, 2021
New York, New York

Respectfully submitted,

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Southern District of New York
Attorney for Defendant

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